

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Anthony Michael Gioiosa, Sr.,

Case No.: 2:22-cv-00113-APG-EJY

Plaintiff

Order

v.

Parole Results Continued,

Defendant

Plaintiff Anthony Michael Gioiosa, Sr. initiated this action by filing an untitled document. ECF No. 1-1. On January 26, 2022, the magistrate judge ordered Gioiosa to (1) submit a complaint and (2) file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee by March 25, 2022. ECF No. 3. The magistrate judge warned Gioiosa that the action could be dismissed if he failed to submit a complaint and file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. *Id.* at 3. That deadline expired and Gioiosa did not submit a complaint, file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

I. Discussion

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply

1 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S.*
2 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court
3 order). In determining whether to dismiss an action on one of these grounds, I must consider: (1)
4 the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its
5 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
6 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
7 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*
8 *v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

9 The first two factors, the public’s interest in expeditiously resolving this litigation and the
10 court’s interest in managing its docket, weigh in favor of dismissal of Gioiosa’s claims. The third
11 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption
12 of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the
13 court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The
14 fourth factor—the public policy favoring disposition of cases on their merits—is greatly
15 outweighed by the factors favoring dismissal.

16 The fifth factor requires me to consider whether less drastic alternatives can be used to
17 correct the party’s failure that brought about the court’s need to consider dismissal. *See Yourish*
18 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
19 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
20 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
21 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of last drastic alternatives
22 prior to disobedience of the court’s order as satisfying this element[,]” *i.e.*, like the “initial
23 granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have

1 been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before
2 finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v.*
3 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed
4 until and unless Gioiosa submits a complaint and either files a fully complete application to
5 proceed *in forma pauperis* or pays the \$402 filing fee for a civil action, the only alternative is to
6 enter a second order setting another deadline. But the reality of repeating an ignored order is that
7 it often only delays the inevitable and squanders the court’s finite resources. The circumstances
8 here do not indicate that this case will be an exception: there is no hint that Gioiosa needs
9 additional time or evidence that he did not receive the magistrate judge’s order. Setting another
10 deadline is not a meaningful alternative given these circumstances. So the fifth factor favors
11 dismissal.

12 **II. Conclusion**

13 Having thoroughly considered these dismissal factors, I find that they weigh in favor of
14 dismissal. I therefore order that this action is dismissed without prejudice based on Gioiosa’s
15 failure to submit a complaint and file a fully complete application to proceed *in forma pauperis*
16 or pay the full \$402 filing fee in compliance with the magistrate judge’s January 26, 2022, order.
17 The Clerk of Court is directed to enter judgment accordingly and close this case. No other
18 documents may be filed in this now-closed case. If Gioiosa wishes to pursue his claims, he must
19 file a complaint and resolve the matter of the filing fee in a new case.

20 Dated: April 6, 2022

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22 _____
23 U.S. District Judge